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US EPA RECORDS CENTER REGION 5



426646

January 17, 2012

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**CERTIFIED MAIL-RETURN RECEIPT
AND E-MAIL**

Michelle Kerr, Remedial Project Manager
U.S. Environmental Protection Agency – Region 5
Superfund Division (SR-6J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

RE: Response of Fresno Valves & Castings, Inc. to General Notice Letter for the
Chemetco Superfund Site

Dear Ms. Kerr:

On behalf of Fresno Valves & Castings, Inc., of Selma California, (Fresno) we are responding to the General Notice letter dated November 30, 2011 from Joan Tanaka of USEPA Region 5 (Letter). The time for response to the Letter was announced as extended to January 17, 2012 at the Region 5 meeting for PRPs in Chicago, held December 20, 2011. The Letter invites Fresno to indicate whether it wishes to negotiate with USEPA to undertake an RI/FS for the Chemetco Site in Hartford, Illinois, and the Letter also included a questionnaire, answers to which are not yet due.

We do wish to thank you, Tom Martin and others at USEPA for taking the time to meet with people whose companies received the Letter. The meeting was useful for an understanding of the Chemetco Site and the nature of USEPA's process of response. We also acknowledge your correspondence of January 12, 2012, just received today, with information about the Site.

We address both the invitation to negotiate and the questionnaire return date below.

Respecting the Invitation to Negotiate:

Fresno did not send waste or other materials for disposal to the Chemetco site. All materials in Fresno's transactions with Chemetco were delivered F.O.B. California to Chemetco and were all purchased by Chemetco. They were useful to Chemetco as raw materials or ingredients in the Chemetco production process, and value was paid to Fresno for them. As such, we respectfully but firmly believe Fresno is not a responsible party as that term is defined by CERCLA. The statements in the Letter of Fresno's potential responsibility are therefore

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Arizona California Florida Illinois Indiana Massachusetts Minnesota Missouri New York Oregon Rhode Island Wisconsin

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mistaken. We believe that Fresno is mischaracterized by USEPA as having sent materials to Chemetco in a manner that gives rise to CERCLA liability. We respectfully note, these facts were disclosed to Illinois EPA in 2008.

The volumes of materials shown as attributed to Fresno in the Enclosure 4 spreadsheet USEPA distributed with the Letter are quite puzzling and plainly in error respecting Fresno. For example, Fresno has been tabulated as having sent 696,776 pounds of "combustible materials" to Chemetco. However, nothing combustible was sold or shipped from Fresno to Chemetco. Given this anomaly, it is obvious mistakes have occurred at some point in USEPA or its contractor's tabulation or classification of data from site records. Also, the listing of pounds of "materials excluded from the definition of scrap metals" is essentially incomplete in determining whether a given PRP has arranged for disposal of hazardous substances within the meaning of CERCLA.

We strongly believe that Fresno is not a responsible party at this site. Our client sent a representative to the Chemetco site on several occasions, and he witnessed materials purchased from Fresno being used as process ingredients or process materials by Chemetco. Therefore we ask that USEPA please identify for us any shipment from Fresno to Chemetco that did not involve a sale of useful material for which Chemetco paid fair value. We also request that you forward to us actual documentation of materials sent from Fresno that went to the Chemetco site but were not purchased by Chemetco for use by Chemetco. Without such documentation, an affirmative response from Fresno to the request from USEPA to undertake a remedial response is very difficult to justify.

Unlike most other parties on the PRP list, Fresno is not a scrap dealer. We have not heard from any other party of any efforts to form a group that could respond to the invitation to do an RI/FS. The unreasonably short time constraints on PRPs imposed by USEPA have made it unrealistic for a group to form, inasmuch as many people are likely still gathering basic information about their relationship to the Site.

If, however, USEPA learns that a Group is being formed, please advise us of how to make contact with the leaders of that potential Group. Further detail on any new meeting set would be appreciated as well. Although we are firm in believing Fresno is not a liable party, Fresno would appreciate the chance to evaluate possible participation in an RI/FS undertaking as long as no admission of fact or liability is thereby created or implied, and contribution protection is accorded to participants.

Respecting the Questionnaire:

Fresno is preparing an answer to the questionnaire you sent to the company, even though it responded to a similar questionnaire from Illinois EPA in 2008. We earlier requested, but were then not given an extension of time until February 29, 2012 to respond to the questionnaire. Subsequently, at the December 20 meeting, many recipients of the letter voiced a need for several months of additional time to respond. We here reiterate our previous modest request. We note that since there is variation in questions between those asked by Illinois and those now

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posed by USEPA, and because it is a time consuming process for Fresno to respond, the situation calls for care and some additional response time definitely will be needed.

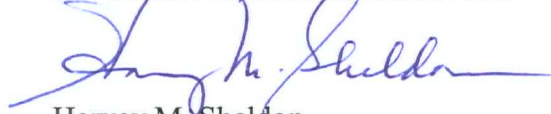
Since Illinois EPA indicated it was acting under auspices of USEPA and CERCLA authority, it is particularly unfair not to allow a company additional time to respond to a different set of questions, even if there is similarity. Please allow us until February 29, 2012 to answer the questionnaire.

In conclusion, please know that in principle, Fresno supports the efforts of USEPA to address problem sites under the CERCLA program and otherwise. We are therefore hopeful that remediation at the Chemetco site will be ultimately successful. We hope you will agree that under the facts and circumstances relevant to Fresno, their above response is reasonable.

Please contact me if there is a question about anything in this letter, and please address all future correspondence to Fresno relating to the Chemetco site to me as well. Thank you.

Very truly yours,

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cc: Fresno Valves
Thomas Martin, Esq. (e-mail only)